

**DECLARATION OF COLETTE PELISSIER IN SUPPORT OF
PLAINTIFF'S MOTION FOR LEAVE TO SERVE A THIRD PARTY
SUBPOENA PRIOR TO A RULE 26(f) CONFERENCE**

I, COLETTE PELISSIER, DO HEREBY DECLARE:

1.I am over the age of eighteen (18) and otherwise competent to make this declaration.

2.The facts stated in this declaration are based upon my personal knowledge and, if called upon to do so, I will testify that the facts stated herein are true and accurate.

3.I own Malibu Media d/b/a as X-Art.com. No other person or entity has or can claim an ownership interest in the X-Art.com movie copyrights.

4.I developed the X-Art.com business plan in 2010 while still working full time as a realtor in the Los Angeles market. X-Art.com was created to address the lack of artistically produced adult oriented content suitable for upscale women and couples.

5.I invested significant time, along with all of my available financial resources, into the production of content for the new X-Art.com website. I knew that the adult content industry was in financial crisis, and the odds of success for a new adult website were low.

6. After a difficult start, and with much effort, I was able to perfect the X-Art genre thus propelling the X-Art.com website into one of the top websites of its kind worldwide.

7. X-Art.com customers can pay a monthly recurring subscription fee of \$29.95, or an annual subscription fee of \$99.95 to access our entire library of HD Video content.

8. Internet subscription sales are and have always been by far X-Art.com's primary source of revenue, however, recent additional revenue streams have been created through the licensing of X-Art content to Fortune 500 companies operating within the hospitality industry.

9. As X-Art's subscriber base has grown, our production expenditures have also grown. We spend over two million dollars a year producing content, and millions more each year to run our business.

10. For the first several years of operation, X-Art did not have significant issues with piracy. However, once our content became well known and highly desirable, X-Art movies started ranking as the most downloaded adult content on several of the most popular torrent websites.

11. Currently we have tens of thousands of paying subscribers, but we are finding it hard to grow and maintain our subscriber base as so many of our movies are distributed for free, without authorization, by users of the BitTorrent



Network. X-Art must protect its copyrights in order to survive and for any hope for future revenue growth.

12. The only redress against BitTorrent based piracy is to initiate lawsuits against the BitTorrent users responsible for these unauthorized distributions.

13. These lawsuits must be filed as "John Doe" lawsuits because the identity of the infringer is initially unknown to us. From my experience filing similar cases against other defendants throughout the country, once provided with the IP Address, plus the date and time of the detected and documented infringing activity, ISPs can use their subscriber logs to identify the name, address, email address and phone number of the applicable subscriber in control of that IP address at the stipulated date and time.

14. The proper forum for these lawsuits is determined by using Maxmind Premium Geolocation services. Founded in 2002, Maxmind's website cites it as an industry-leading provider of geolocation databases¹. It is also used by state and federal law enforcement in the prosecution of computer and cybercrimes.

15. Since January 2013, Malibu Media has used this geolocation procedure to determine the proper District for filing in 5,349 cases. Out of these 5,349 total cases, 5,334 have accurately traced to the District Court in which the case was filed. This translates to a 99.99% chance of proper personal jurisdiction and venue pursuant to the Maxmind Geolocation trace.

¹ www.maxmind.com



16. Over the past several years, Malibu Media has employed two experts to track and scan the infringement of its movies - Excipio GmbH ("Excipio") and IPP International U.G. ("IPP").

17. Investigators from both companies have testified in court and have attested to the reliability of the applicable forensic technology. Malibu Media has also independently tested each system to ensure the highest level of accuracy.

18. Each recorded infringement enumerated on Exhibit A to the Complaint in this lawsuit was documented by either IPP or Excipio. In many instances, infringing transactions were documented by both entities. Each Single Movie Hash on Exhibit A was fully downloaded and compared side by side to a control copy supplied to the applicable investigator by Malibu Media.

19. Malibu Media's intention in bringing these lawsuits is not to cause financial hardship but instead to deter infringement and be compensated for the intentional theft of its videos.

20. I have consistently instructed all attorneys representing Malibu Media in these lawsuits to seek and be open to exculpatory evidence and to be cautiously prudent when pursuing these claims. We do not pursue our claims against all Doe Defendants. For example, once receiving discovery, we may learn that a Defendant is on active duty in the military and we will dismiss that case. Also, we may learn a Defendant is possibly a coffee shop with open wireless, or some other circumstance that would prevent us from pursuing our claims. When

discovery indicates that pursuing the case will present for undue hardship for the Defendant, my instructions to my lawyers are to dismiss the case.

21. We invest significant resources into pursuing all types of anti-piracy enforcement, such as Digital Millennium Copyright Act ("DMCA") takedown notices and direct efforts aimed at infringing websites. We are even working with law enforcement to stop the piracy of our movies.

22. Despite sending thousands of DMCA notices per week, the infringement continues. And, if one searches for "X-Art" on a torrent website, the site will reveal thousands of unauthorized torrents available for free.

23. I have never authorized anyone to put our works on a torrent website.

24. I firmly believe that we must exercise our rights under the Copyright Act to prevent infringement. Otherwise, we face an immediate and serious risk. It is simply impossible to compete with free.

25. We do not seek to use the Court system to profit from the infringement like some have suggested. As previously stated, revenues from subscriptions to X-Art.com are by far and away the dominant driver of Malibu Media's business. We want the infringement to stop. The purpose of these lawsuits is to motivate people to pay for subscriptions by deterring infringement and seek some reasonable compensation for the massive amount of infringement of our copyrights.

26. It is my hope that by upholding the law, the courts will protect our ability to continue with our dream and allow all creative people the ability to make a living by distributing their work in this fast-paced digital age.

27. In conclusion, we want the courts to know that we are a small business and we need the law to be enforced to ensure our survival. It is getting more difficult for us every day and we hope that in the future there will be a better way to protect our copyrights.

28. Thank you in advance for your time and consideration of this matter, please do not hesitate to ask if we can clarify any further questions.

DECLARATION

PURSUANT TO 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By: 

COLETTE PELISSIER